

APPEAL NO. 172652  
FILED DECEMBER 21, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 25, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to a left knee medial meniscus tear or a left knee quadriceps tear; (2) the appellant (claimant) reached maximum medical improvement (MMI) on February 9, 2017; (3) the claimant's impairment rating (IR) is zero percent; and (4) the claimant had disability from October 15, 2016, through February 9, 2017, but not thereafter, resulting from an injury sustained on (date of injury).

The claimant appealed the ALJ's determinations regarding extent of the compensable injury, MMI, IR, and disability as being contrary to the evidence. The claimant further denied that the parties stipulated that the compensable injury did not extend to a left knee lateral meniscus tear, left knee valgus deformity, and aggravation of left knee chondromalacia.

The respondent (carrier) responded, urging affirmance.

**DECISION**

Affirmed in part and reversed and remanded in part.

It is not disputed that the claimant sustained a compensable injury on (date of injury), when a forklift operator struck the claimant's left leg with a pallet causing the leg to be crushed against another pallet. The parties stipulated, in part, that the carrier has accepted as compensable a left ankle contusion and left knee sprain.

**FINDING OF FACT NO. 1.G.**

The extent-of-injury issue originally certified for resolution at the CCH was as follows:

1. Does the compensable injury of (date of injury), extend to and include a left knee medial meniscus tear, left knee lateral meniscus tear, left knee valgus deformity, left knee quadriceps tear, and aggravation of left knee chondromalacia?

In Finding of Fact No. 1.G. the ALJ determined that the parties had stipulated that the compensable injury of (date of injury), does not extend to or include left knee lateral meniscus tear, left knee valgus deformity, and aggravation of left knee chondromalacia. Based upon this stipulation, the ALJ revised the extent-of-injury issue as follows:

1. Does the compensable injury of (date of injury), extend to and include a left knee medial meniscus tear and left knee quadriceps tear?

The claimant argues on appeal that the parties did not enter into a portion of the stipulation included by the ALJ as Finding of Fact No. 1.G.; however, a review of the audio recording of the CCH reveals that the ALJ did correctly record the stipulations of the parties. Finding of Fact No. 1.G. is supported by sufficient evidence and is affirmed.

### **EXTENT OF INJURY**

The ALJ's determination that the compensable injury of (date of injury), does not extend to a left knee medial meniscus tear or left knee quadriceps tear is supported by sufficient evidence and is affirmed.

### **MMI/IR**

The ALJ's determination that the claimant reached MMI on February 9, 2017, with a zero percent IR is supported by sufficient evidence and is affirmed.

### **DISABILITY**

In the Discussion section of her Decision and Order, the ALJ correctly indicates that the claimant testified that, due to the (date of injury), injury, he has been unable to earn his pre-injury wage from October 15, 2016, and continuing through the date of the CCH. The ALJ found that the claimant had disability from October 15, 2016, through February 9, 2017, the date that (Dr. V), the designated doctor selected by the Texas Department of Insurance, Division of Workers' Compensation (Division), certified that the claimant reached MMI with regard to the compensable left ankle contusion and left knee sprain.

Disability and MMI are different concepts, although both may impact on the payment of temporary income benefits (TIBs). Appeals Panel Decision (APD) 033305, decided January 27, 2004. Section 401.011(16) defines disability as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage. MMI is defined as the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated (Section 401.011(30)(A)). While a

claimant's entitlement to TIBs ends when he or she reaches MMI, disability as defined by Section 401.011(16) does not necessarily end on that date. See APD 051030, decided June 20, 2005; APD 132544, decided December 17, 2013. Section 408.101 provides that an employee is entitled to TIBs if the employee has a disability and has not attained MMI.

There are a number of Work Status Reports (DWC-73) in evidence finding the claimant capable of working restricted duty but only two DWC-73s and accompanying reports address his ability to work based solely upon the left ankle contusion and left knee sprain determined by the ALJ to be the extent of the compensable injury. In a DWC-73 dated December 1, 2016, issued by Dr. V following an examination on that date, the claimant is returned to work with restrictions as of December 1, 2016, "through present." The carrier's choice of physician, (Dr. M), examined the claimant on April 19, 2017, and also determined that the claimant reached MMI on February 9, 2017, with a zero percent IR. As noted by the ALJ, Dr. M issued a DWC-73 dated April 19, 2017, indicating the claimant could return to work without restrictions as of October 15, 2016.

The ALJ found that the claimant's disability ended on February 9, 2017; however, there is no evidence in the record to support February 9, 2017, as the ending date of the claimant's disability. The fact that further material recovery from or lasting improvement to the compensable injury could no longer reasonably be anticipated does not necessarily mean the claimant did not have disability, as defined by Section 401.011(16), after the date of MMI.

We reverse the ALJ's determination that the claimant's disability ended February 9, 2017, as not being supported by the evidence and remand the case for an ending date of disability that is supported by the evidence.

### **SUMMARY**

We affirm Finding of Fact No. 1.G. that the parties stipulated that the compensable injury of (date of injury), does not extend to or include left knee lateral meniscus tear, left knee valgus deformity, and aggravation of left knee chondromalacia.

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to a left knee medial meniscus tear or left knee quadriceps tear.

We affirm the ALJ's determination that the claimant reached MMI on February 9, 2017, with a zero percent IR.

We reverse the ALJ's determination that the claimant's disability ended February 9, 2017, as not being supported by the evidence and remand the case for an ending date of disability that is supported by the evidence.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **STANDARD FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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K. Eugene Kraft  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge